

AUG 02 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ADEDAYO FALAC BENSON, aka
Adedayo Benson, aka Day F. Benson, aka
Eidris Ayo Adeylabu,

Defendant - Appellant.

No. 05-50185

D.C. No. CR-02-00441-GAF-2

MEMORANDUM^{*}

Appeal from the United States District Court
for the Central District of California
Gary A. Feess, District Judge, Presiding

Submitted July 24, 2006^{**}

Before: ALARCÓN, HAWKINS, and THOMAS, Circuit Judges

Adedayo Benson appeals the sentence imposed following his guilty plea to
conspiracy, attempted use of unauthorized access device, use of unauthorized

^{*} This disposition is not appropriate for publication and may not be cited to or by
the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral
argument. *See* Fed. R. App. P. 34(a)(2).

access device, and aiding and abetting, in violation of 18 U.S.C. §§ 1029(a)(2), (b)(1), and (b)(2).

Benson contends that the district court erred under *United States v. Booker*, 125 S. Ct. 728 (2005), by enhancing his sentence and imposing an upward departure based on facts that were neither found by a jury nor admitted. This contention lacks merit because increasing a sentence based on judicial fact-finding does not run afoul of the Sixth Amendment where, as here, the sentence was imposed under an advisory guidelines system. *United States v. Ameline*, 409 F.3d 1073, 1078 (9th Cir. 2005) (en banc) (“A constitutional infirmity arises only when extra-verdict findings are made in a mandatory guidelines system.”).

Because Benson does not argue that his sentence is otherwise unreasonable, we **AFFIRM**.